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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2226 OF 2007

Sajid Saifuddin .... Petitioner

Versus

The Modern Education
Society and Ors. ... Respondents

Ms. Ushajee Beri i/by Mihir Desai for Petitioner.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: APRIL 09, 2007

P.C.:

. The college has forwarded the proposal to the Government by working out 34% reservation. The Petitioner belongs to the open category. The application for approval was rejected on the ground that even considering 34% reservation, there was backlog and as such no approval can be granted.

. The learned counsel draws our attention to Rule 9(7) of the M.E.P.S. Rules. That rule, read with Rule 8 only permits filling in of vacancies in the absence of candidates belonging to groups as set out therein from other groups. That does not mean that the quota set out in Rule 9(7) can be disturbed. It presupposes that there are vacancies in terms of the percentage reserved therein for the group from which appointment is being made. If there is no vacancy

in terms of the percentages reserved, there is no question of filling the vacancy by persons from other group.

. Reliance placed on Rule 10 (a) and (b), in our opinion, again is misplaced considering the clear terminology of Rule 7 and 8. The Judgment in Shakuntala Ganpatsa Shirbhate Vs. Industrial Weaving Cooperative Society and Others, AIR 1994 Supreme Court 36 does not, in any way, take a view contrary to the rules. On the contrary, vacancies were interchanged between Nomadic Tribes and backward class candidates. We find no proposition in that judgment as sought to be canvassed on behalf of the Petitioner, that irrespective of percentage of vacancies, it is open to the College to fill in the vacancies from candidates from other categories. Rule 7 restricts itself only to the reserved category and not to open category candidates. In other words, the open category candidates cannot be appointed on the regular basis for the seats reserved for reserved candidates.

. In our opinion, there is no merit in this petition, which is accordingly rejected.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**